

MILITARY LAW

***Office of Staff Judge Advocate
Fort Rucker, Alabama***



Administering Military Justice at the Unit Level

- **If you remember nothing else from this briefing, always remember to ...**
- **C**
- **Y**
- **A**



**Call
Your
Attorney**



Topics Today

- ***Commander Issues***
 - ***Conducting an investigation***
 - ***Reading Soldiers their Rights***
 - ***Search and Seizure***
 - ***Pre-Trial Confinement***
- ***Administrative Actions***
- ***Non-Judicial Punishment (Art. 15)***
- ***Courts-Martial***



Investigating Misconduct

- **Formal or informal methods**
 - **AR 15-6**
 - **Commander's Inquiry**
- **Reading soldiers their rights**
- **CDR should stay above the fray**
- **CID - for investigation of criminal acts**
- **Art 32 - most formal - more latter**



“Miranda Rights”

- ***Rule: Anyone subject to the UCMJ must advise anyone else who is subject to UCMJ of right against self-incrimination before questioning them when questioning is intended to solicit information pertaining to misconduct.***
- ***WHY??***
 - ***5th Amendment to the U.S. Constitution***
 - ***Right against Self-Incrimination***
 - ****Use of rank to coerce confession***



Article 31(b) Rights

- ***Right to Remain Silent***
- ***Anything You Say May be Used Against You***
- ***Right to be Advised of Nature of Suspected Offense***
- ***Right to an Attorney***



How to Advise?

- *Call MPI, SJA, or CID before talking to anyone suspected of a crime - **CYA***
- *If you interview soldier--Use DA Form 3881*
 - *follow instructions on back of form*
 - *do not continue to question if soldier invokes his/her right to remain silent or if soldier asks for an attorney.*



Search and Seizure

- *Need 2 things to Order a Search:*
 - 1. *Authority*
 - 2. *Probable Cause_*



Authority to Search

- Commander***
 - Authority over person or place***
- Military Judge***
- *Military Magistrate***
 - not the Prosecutor!***



PREFER COMMANDERS NOT TO AUTHORIZE SEARCHES

- *WHY? Commander's multiple roles:*
 - *Accuser in C-M*
 - *Judge and Jury in Article 15*
 - *Investigator - Power to interview*
- *Let the Magistrate do it!!*



PROBABLE CAUSE

- ***Reasonable belief that a person, property, or other evidence is located in the place to be searched***
- ***Look at the “Totality of the Circumstances”***



COMMAND INSPECTIONS

- Inspection: primary purpose to ensure security, military fitness, or good order and discipline. NO PROBABLE CAUSE REQUIRED.
- Inspection includes:
 - order to locate & confiscate unlawful weapons or contraband
 - urinalysis



WHEN INSPECTIONS ARE ABUSED

- *If primary purpose is to locate weapons or contraband and “inspection” ordered after:*
 - *report of specific offense & not scheduled*
 - *specific individuals selected*
- *Then it is not an “Inspection”*
- *Result: evidence is inadmissible*



Teaching Point

- ***Plan unit “inspections” in advance.***
- ***This includes Urinalysis***
- ***Do a memo (MFR) signed by CDR and/or 1SG stating dates and times that the unit will conduct unit inspections.***
 - ***keep it secret***



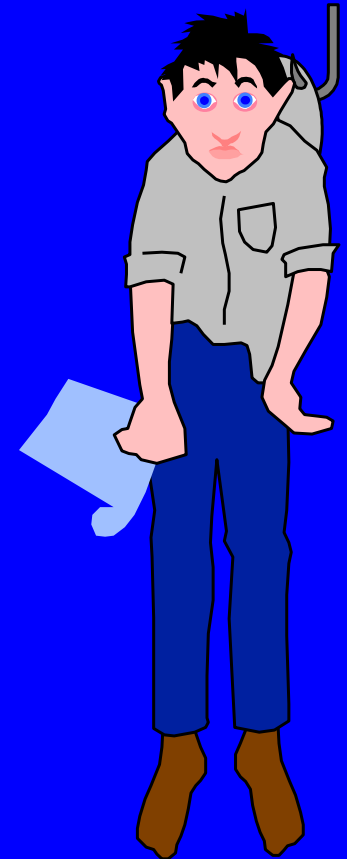
CRIMES

- UCMJ - Articles 78-132 are “enumerated offenses”
- Includes “military” crimes such as disobedience & “civilian” such as murder, theft, writing bad checks
- Art 133 - conduct unbecoming
- Art 134 - prejudice to good order and discipline

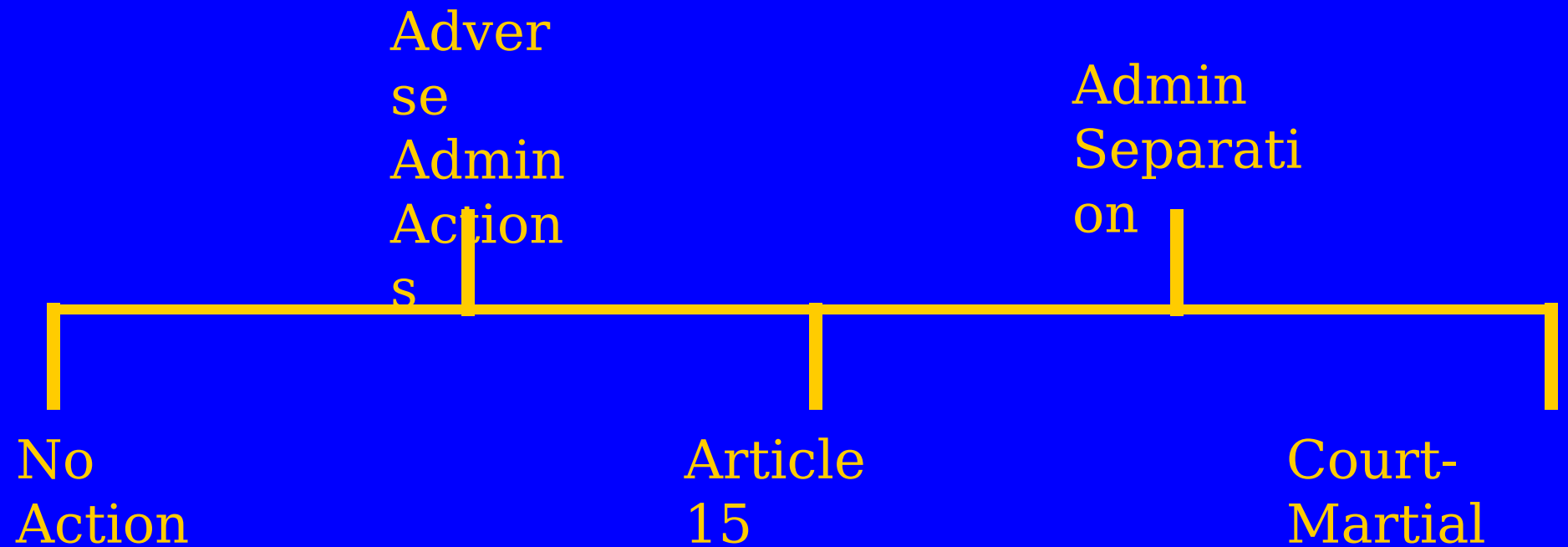


Pretrial Confinement

- *Requirements:*
 - *Probable cause that the soldier committed a UCMJ offense; and*
 - *Flight Risk, or*
 - *Danger that the soldier will commit further serious misconduct*
- *Allows Command to keep soldier incarcerated until trial*
- *Soldier gets credit for time served*
- *Process ...*
- *Restriction if too limited = confinement*



CONTINUUM OF ACTIONS



Consequences to
Soldier



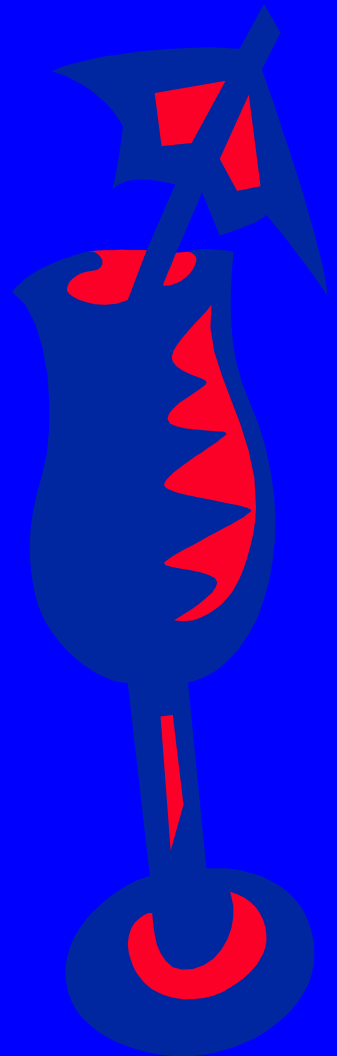
ADVERSE ADMIN ACTIONS

- *FLAGS*
- *EXTRA TRAINING*
- *REVOKE PASS*
- *COUNSELING*
- *ADMIN LETTER OF REPRIMAND*
- *BAR TO REENLISTMENT*
- *INVOLUNTARY SEPARATIONS*



LETTERS OF REPRIMAND

- *Reason:*
 - *Typically minor or non-criminal*
 - *Errors in judgment*
 - *DUI (AR 190-5) (Mag. Court)*
- *Soldier's Rights:*
 - *Notice*
 - *Respond (7 days)*
- *Filing: OMPF (GO only) or Local (goes away after PCS)*



TYPES OF DISCHARGES

- **HONORABLE**
- **GENERAL (under honorable conditions)**
- **OTHER THAN HONORABLE (OTH) - (Board & GO Required)**
- **Entry Level Service (ELS)- Ch. 11 only**
- **Uncharacterized- Fraudulent entry (Ch. 7 only)**
- ***Bad Conduct Discharge (BCD)**
- ***Dishonorable Discharge (DD)**



ENLISTED SEPARATIONS

- Reasons under AR 635-200:
 - parenthood, Ch. 5-8
 - personality disorder, Ch. 5-13
 - ADAPCP rehab failure, Ch. 9
 - entry level performance, Ch. 11
 - unsat performance, Ch. 13
 - misconduct, Ch. 14
 - homosexuality, Ch. 15
 - overweight, Ch. 18

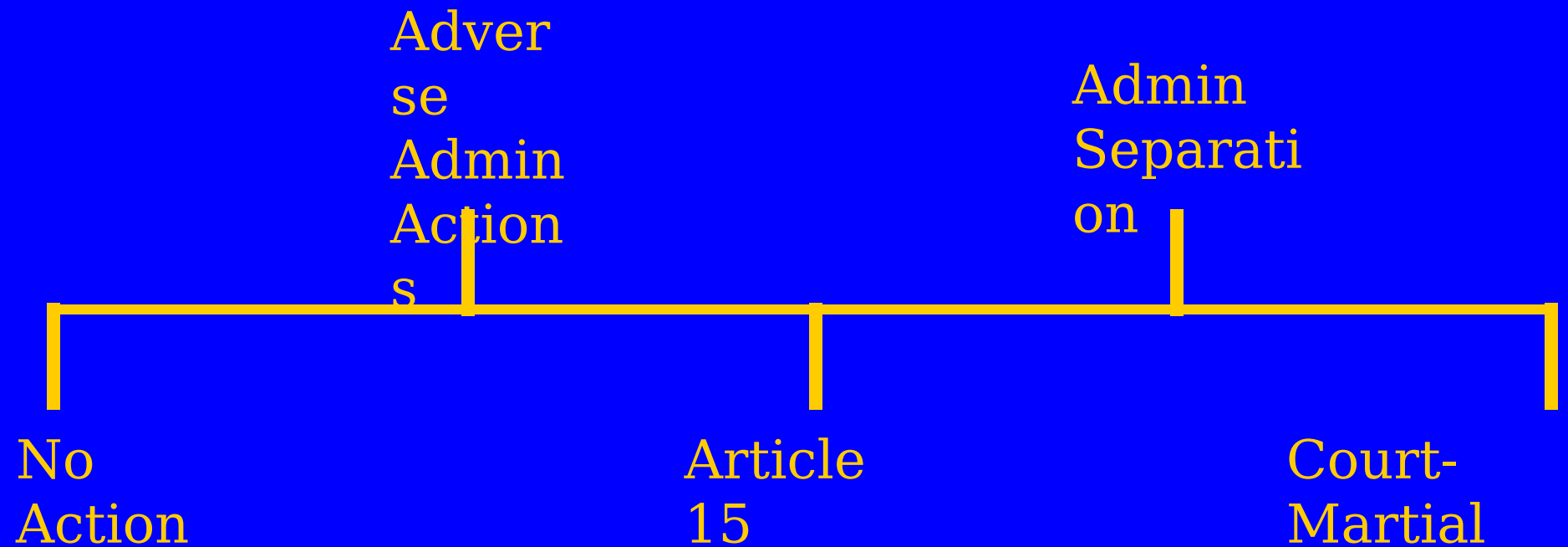


Article 15, UCMJ

Non-Judicial Punishment



CONTINUUM OF ACTIONS



Consequences to
Soldier



JURISDICTION

- *Criminal Jurisdiction only*
- *WHO?: All active duty or active for training.*
 - *Does not matter where crime occurs!!*
 - *No jurisdiction over civilians*
- *Offenses: UCMJ, local law, Federal*



ARTICLE 15, UCMJ

- *Purpose:*
 - *punishment of soldiers for minor offenses*
 - *correct, educate and reform soldiers*
 - *maintain good order and discipline*
- *Types:*
 - *Summarized or Formal*
 - *Company Grade or Field Grade (only commanding officers)*



Process

- ***Soldier commits a criminal act***
- ***CDR determines that criminal act can be proven beyond reasonable doubt***
- ***CDR decides to offer Art.15 to Soldier***
- ***CDR or 1SG “reads” Art. 15 to Soldier***
- ***Soldier gets 48 hrs to see defense lawyer & decide what to do (Formal only)***
- ***Soldier reports & elects Art. 15 or C-M***
- ***If Soldier elects Art.15 - CDR proceeds with Art.15 hearing***



RIGHTS OF THE SOLDIER

- ***Demand trial by C-M***
- ***Remain silent***
- ***Consult with counsel (Formal only)***
- ***Present case, call witnesses***
- ***Be represented (lawyer or not)***
- ***Request an open hearing***
- ***Appeal decision to next CDR***



Punishment, Summ. Art. 15

- 14 days extra duty
- 14 days restriction
- oral reprimand



Formal Article 15s

- **Company Grade**
 - admonition/reprimand
 - **Correctional Custody - E3 and below only - 7 days**
 - **7 days pay**
 - **reduction 1 grade (E-4 and below only)**
 - **14 days**
 - extra duty
 - restriction
- **Field Grade**
 - admonition/reprimand
 - **Correctional Custody - E3 and below only - 30 days**
 - **1/2 of 1 mos pay for 2 mos**
 - **reduction 1 or more grades, E4 and below**
 - **E5 & E6 - one grade**
 - **45/60 days**
 - extra duty (45)
 - restriction (60)



APPEALS

- *Grounds For Appeal*
 - ***Punishment unjust, too harsh, or soldier believes not guilty***
- *Process*
 - ***Made in writing***
 - ***Soldier may submit supporting documents***
- *Appeal within 5 days after imposition of punishment to next higher CDR*



APPEALS

Action on the Appeal

- ***Approve punishment***
- ***Reduce the punishment***
- ***Suspend the punishment***
- ***Set aside the punishment***
- ***May not increase punishment in any “category.”***

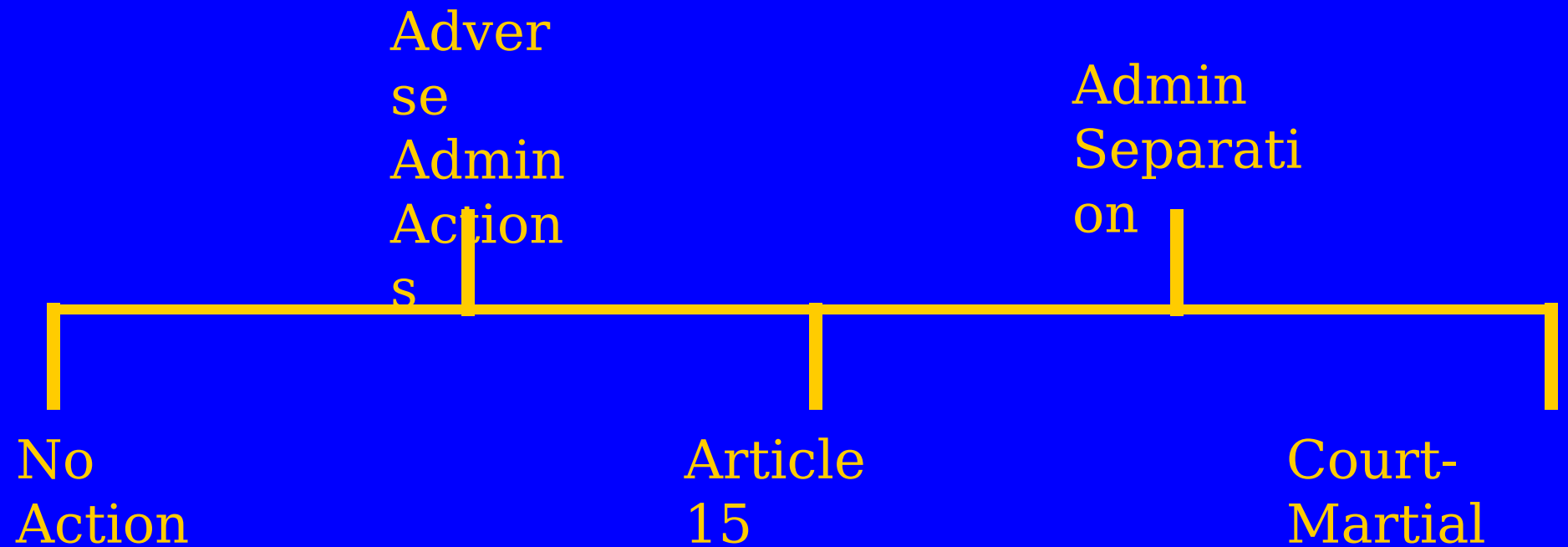


Courts-Martial

The End of the Line



CONTINUUM OF ACTIONS



Consequences to
Soldier



TYPES OF COURTS-MARTIAL



- Summary
- Special
- BCD-Special
- General



The Court-Martial Process

- **Discovery of Misconduct**
- **Investigation**
- **Decision Point (see continuum)**
- **Preferral - Forwarding of Charges**
- **Article 32 Investigation (maybe)**
- **Referral by the CG**
- **Trial by Judge or Panel**
- **Action by Convening Authority**



“Preferral” of Charges

- *Initiates the Court-Martial process*
- *JAG prepares the charge sheet*
- *CDR reads charges to the Accused*
- *Co & Bn CDRs recommend level of C-M*
 - *be careful to avoid UCI*
- *BDE CDR decision point*
- **Article 32 Investigation conducted*
- *CG decision point*
- *“Referral” of charges to OSJA for trial*



Article 32 Hearing

(Only if case will go to a General Courts-Martial)

- *Impartial Investigating Officer*
 - *Makes findings & recommendations*
 - *May not dismiss charges*
 - *Does not decide guilt & sentence*
- *Right to Counsel*
- *Right to Cross Examination*
- *Right to Summarized Written Transcript*



Summary/Special C-M

- *BN/BDE CDR's*
- *Summary = FG 15 (can be turned down)*
- *Special = No discharge can be adjudged*
- *BCD-Special - must go to the CG*
 - *Max punishment of 1 year confinement*
 - *2/3 forfeiture*
 - *no Article 32*



General Court-Martial

- *CG refers*
- *Military Judge*
- *Panel (5 members)*
- *Appointed Attorney*
- *Article 32 Hearing*
- *Formal Trial*
- *Any Punishment Under UCMJ*
 - *Total Forfeiture all pay & allowances*
 - *Dishonorable Discharge / Dismissal*
 - *Jail*
 - *Death*
- *Officers or Enlisted*



“Chapter 10”

- Court-Martial proceedings initiated
- Discharge in lieu of C-M UP AR 635-200
- Discharge: OTH or General (rare)
- No Board requirement for OTH
- *Soldier must initiate the Chapter
 - Memo to the CG from TDS
- Chain-of-Command makes recommendations to the CG
- CG is the approval/denial authority



Homosexual Conduct Policy

- **“Don’t Ask, Don’t Tell”**
- **Duty to inquire (“SAM”)**
 - **Statement**
 - **Act**
 - **Marriage**
- **Separate IAW Chapter 15**
- **Victim of harassment not subject of investigation**



Extremist Organizations

- Participation in extremist organizations & activities is inconsistent with military service
- Army policy – equal treatment & opportunity – SO, DO NOT
 - Participate in public rally
 - Recruit or fund raise
 - Attend meeting in uniform
 - Have a leadership role
 - Distribute literature



HAZING

- **Hazing vs. Custom**
 - **Cruel**
 - **Abusive**
 - **Humiliating**
 - **Demeaning**
 - **Harmful**

Punishable under UCMJ



I'm Done

- Questions??

